

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAMES T. SUZUKI d.b.a.
SHORELINE CONSTRUCTION COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 881

FINAL
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$100 civil penalty for an alleged open burning violation of respondent's Regulation I; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 5th day of September, 1975, at Seattle, Washington; and appellant James T. Suzuki d.b.a. Shoreline Construction Company appearing through a part owner, Frank Bishop and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Chris Smith and Walt Woodward and the Board

1 having considered the sworn testimony, exhibits, records and files
2 herein and having entered on the 18th day of September, 1975, its
3 proposed Findings of Fact, Conclusions of Law and Order, and the
4 Board having served said proposed Findings, Conclusions and Order
5 upon all parties herein by certified mail, return receipt requested
6 and twenty days having elapsed from said service; and

7 The Board having received no exceptions to said proposed
8 Findings, Conclusions and Order; and the Board being fully advised
9 in the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order, dated the 18th day
12 of September, 1975, and incorporated by this reference herein
13 and attached hereto as Exhibit A, are adopted and hereby entered
14 as the Board's Final Findings of Fact, Conclusions of Law and Order
15 herein.

16 DONE at Lacey, Washington, this 16th day of October, 1975.

17 POLLUTION CONTROL HEARINGS BOARD

18
19 
20 CHRIS SMITH, Chairman

21
22 
23 WALT WOODWARD, Member

24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND
ORDER

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7

Mr. Frank D. Bishop
Shoreline Construction Company
P. O. Box 358
Woodinville, Washington 98072

Mr. Keith D. McGoffin
Burkey, Marsico, Rovai, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JAMES T. SUZUKI d.b.a.
SHORELINE CONSTRUCTION COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 881

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of a \$100 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Chris Smith, presiding officer, and Walt Woodward) at a formal hearing in the Seattle facility of the State Board of Industrial Insurance Appeals on September 5, 1975.

Appellant was represented by Frank Bishop, a part owner. Respondent appeared through Keith D. McGoffin. Jennifer Rowland, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From testimony heard and exhibits examined, the Pollution
2 Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 Respondent, pursuant to Section 5, chapter 69, Laws of 1974,
6 3d Ex. Sess., has filed with this Board a certified copy of its
7 Regulation I containing respondent's regulations and amendments
8 thereto.

9 II.

10 Section 9.02(b)(3) of respondent's Regulation I makes it
11 unlawful to cause or allow an outdoor fire containing petroleum
12 and rubber products or materials which cause dense smoke. Section 3.29
13 authorizes respondent to levy a civil penalty of not more than \$250
14 for any violation of Regulation I.

15 III.

16 On March 20, 1975, appellant obtained from the State Department
17 of Natural Resources (DNR) a "brush cleanup" open burning permit
18 for a fire on appellant's premises at 19545 Woodinville-Snohomish
19 Road, King County. A DNR official inspected the proposed burning
20 and approved it after requiring appellant to remove therefrom
21 plastic sheeting.

22 The reverse side of the printed DNR permit, which appellant
23 did not read, specifies that the fire must not include "rubber
24 products" or "similar materials that emit dense smoke."

25 IV.

26 The fire was ignited. Later that day, in response to a

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 complaint, an inspector on respondent's staff inspected the
2 fire and saw therein a piece of creosoted lumber, rubber hose
3 and a five-gallon tar pot.

4 In connection therewith, respondent served on appellant
5 Notice of Violation No. 11013, citing Section 9.02 of respondent's
6 Regulation I, and, subsequently, Notice of Civil Penalty No. 2071
7 in the sum of \$100, which is the subject of this appeal.

8 V.

9 Any Conclusion of Law hereinafter stated which is deemed
10 to be a Finding of Fact is adopted herewith as same.

11 From these facts, the Pollution Control Hearings Board
12 comes to these

13 CONCLUSIONS OF LAW

14 I.

15 A concern of this Board in this matter is the fact that
16 appellant made a good faith effort to comply with the law by
17 seeking, and obtaining, a permit from the proper governmental
18 agency. That concern is deepened by the clearance of the burn
19 site after the DNR official inspected it and ordered removal of
20 plastic sheeting.

21 Parenthetically and in behalf of the DNR official who was
22 not present at the hearing, we wish to add that testimony did
23 not disclose whether other prohibited material, later discovered
24 to be in the burn pile, was visible to the DNR official.

25 II.

26 Appellant, however, did not read the DNR permit's reverse

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 side on which was a specific ban against inclusion of "rubber
2 products" and material emitting dense smoke. The fire did contain
3 rubber products and other materials which cause dense smoke when
4 ignited. Appellant, therefore, violated the terms of the DNR
5 permit.

6 III.

7 Appellant was in violation of respondent's Regulation I
8 as cited in Notice of Violation No. 11013.

9 IV.

10 While Notice of Civil Penalty No. 2071 is reasonable,
11 appellant, in view of its effort to obtain a proper permit, is
12 entitled to some additional leniency.

13 V.

14 Any Finding of Fact herein which is deemed to be a Conclusion
15 of Law is adopted herewith as same.

16 Therefore, the Pollution Control Hearings Board issues this

17 ORDER

18 The appeal is denied, appellant is directed to pay respondent
19 \$50 of the amount specified in Notice of Civil Penalty No. 2071,
20 but the balance of \$50 is suspended pending no similar violation
21 for a period of six months from the date this order becomes final.

22 DONE at Lacey, Washington this 18th day of September, 1975.

23 POLLUTION CONTROL HEARINGS BOARD

24 Chris Smith
25 CHRIS SMITH, Chairman

26 Walt Woodward
27 WALT WOODWARD, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER